

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
Plaintiff,)

and)

Civil No. 91-CV-477 (HGM)

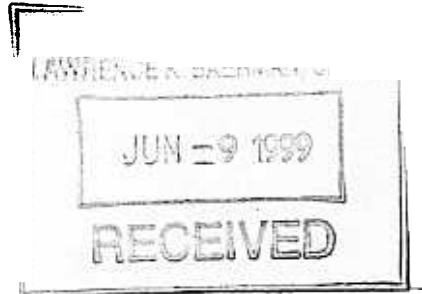
THE STATE OF NEW YORK and THOMAS C.)
JORLING, Commissioner of)
Environmental Conservation of the)
State of New York,)

Plaintiffs-Intervenors,)

v.)

ONONDAGA COUNTY, NEW YORK;)
COMMISSIONER OF ONONDAGA COUNTY)
DEPARTMENT OF DRAINAGE &)
SANITATION,)

Defendants)



CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("U.S. EPA" , having filed a Complaint herein on May 1, 1991, alleging that Defendants, Onondaga County ("Defendant County" and the Commissioner of Onondaga County Department of Drainage and Sanitation "Commissioner" violated the Clean Water Act (the "Act" , 33 U.S.C. §§ 1251 et seq., and the terms and conditions of its State Pollutant Discharge Elimination System ("SPDES" permits, Permit Numbers: NY0027081; NY0027723; NY0027618; NY0030571; and NY0030317;

WHEREAS, the Defendant County owns and operates publicly owned wastewater treatment works "POTWs" known as the Metropolitan Syracuse Sewage Treatment Plant "STP" the Meadowbrook-Limestone STP, the Wetzell Road STP, the Baldwinsville-Seneca Knolls STP and the Oak Orchard-Davis Road STP, all of which STPs discharge wastewater into the navigable waters of the United States;

WHEREAS, the State of New York ("State" filed a motion to intervene as a Plaintiff, together with a Complaint on May 1, 1991, which Complaint alleged, inter alia, violations of New York State Environmental Conservation Law §§ 17-0303(4)(c 71-1927, 71-1929, and 71-1931;

WHEREAS, the Defendants having denied the allegations of both complaints and the Court on June 28, 1991 issued an Order granting the State's motion to intervene; and

WHEREAS, Plaintiffs and Defendants, having agreed that the settlement of this matter without further litigation is in the public interest, and the Court being duly advised;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Consent Decree by their attorneys and authorized officials,
IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter herein and parties consenting hereto pursuant to 28 U.S.C §§ 1331, 1345 and 1355, and Section 309 of the Act, 33 U.S.C § 1319. Venue is proper in this District pursuant to 28 U.S.C § 1391 and 1395(a), and Section 309(b) of the Act, 33 U.S.C. § 1319(b). The United States' Complaint filed in this action, and, solely for purposes of this Consent Decree, the State of New York's Complaint filed in this action, each state claims upon which relief may be granted against the Defendants.

II. BINDING EFFECT

2. This Consent Decree shall apply to and be binding upon Defendants, their officers, directors, agents, servants employees, successors, assigns, and all persons in active concert or participation with any of them. Defendant County, through its officers and agents, shall give written notice of this Consent Decree and a copy thereof to any successor in interest at least thirty (30) days prior to transfer of ownership, operation, or other interest in Defendant County's POTWs. Defendant County shall notify, in writing, all parties to this Consent Decree, at the addresses specified in Section XV, at least sixty (60) days in advance, of any such transfer. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of their agents, servants, contractors or

employees to take actions necessary to comply with the Decree Defendant County shall condition the transfer of ownership, operation, or other interest, upon the continued compliance by any successor or assign with the terms and conditions of this Consent Decree

III. OBJECTIVES AND DEFINITIONS

3 The express purpose of the parties in entering into this Consent Decree is to further the goals of the Act, specifically Sections 101, 301, 303, 307, 402, and 405 of the Act, 33 U.S.C §§ 1251, 1311, 1313, 1317, 1342, and 1345. All plans, studies, construction, remedial maintenance, monitoring programs, inspections, pretreatment program activities, and other obligations in this Decree shall have the objective of causing the County to be in full compliance with the Act, including compliance with the terms and conditions of SPDES permits, Permit Numbers: NY0027081; NY0027723; NY0027618; NY0030571 and NY0030317 renewals or amendments to the Permits, its Pretreatment Program, and the provisions of applicable Federal and State laws and regulations governing the Defendant County's operation of its POTWs and discharges from these facilities.

4 Unless otherwise defined herein all terms used in this Consent Decree shall have the meaning given to those terms in the Clean Water Act, 33 U.S.C. § 1251 et seq., the federal regulations promulgated thereunder, in particular 40 C.F.R. Part

(as amended on July 24, 1990, 55 Fed. Reg. 30082 or as subsequently amended), the Defendant County's SPDES Permits, and the Defendant County's approved Pretreatment Program. If there any conflicts between definitions and requirements in the regulations and the permits or Pretreatment Program, the definitions in the federal pretreatment regulations, 40 C.F.R Part 403, shall control over the definitions in the SPDES permits and Pretreatment Program. For example, "Significant Industrial User" (or "SIU" is defined, irrespective of any other definitions in the Defendant County's Pretreatment Program or SPDES Permits, by 40 C.F.R. § 403.3(t)

IV. COMPLIANCE PROGRAM

5. The Defendant County's Pretreatment Program, approved by the U.S. EPA Region II, in June 1984, and the sludge disposal methods modification, approved by U.S. EPA, Region II in October 1993, the County's Ordinance implementing the Pretreatment Program, and the County of Onondaga Rules and Regulations Relating to the Use of the Public Sewer System, are hereby incorporated into this Consent Decree by reference. These documents shall hereby be collectively referred to as the Defendant County's "Pretreatment Program"

6. Defendants shall fully implement and effectively enforce the provisions of the Pretreatment Program as required in Part A of Defendant County's SPDES permits and comply with the reporting

requirements in Part F of Defendant County's SPDES permits
Defendants failure to fully and timely implement any provision
of the Pretreatment Program or any permit requirements related to

A or Part F of the Permit, shall constitute a violation of
this Consent Decree

A. Industrial User Survey

7 Defendant County, shall, within one year from the date
of entry of the Consent Decree, complete an Industrial User
Survey, utilizing information collected through the survey it
mailed to approximately 726 facilities located in the County on
October 15, 1992, and all other information available to the
County In the Industrial User Survey, the Defendant County shall
identify, locate and classify by Standard Industrial
Classification "SIC") code all possible Industrial Users "IUs")
which might be subject to the POTW Pretreatment Program, identify

character and amount of pollutants, and volume of discharge
contributed to the POTW for those industries identified as
potentially significant industrial users, and develop a list of

SIUs, including Categorical Industrial Users ("CIUs" , and
their compliance status with local limits/categorical
pretreatment standards. In addition, the Industrial User Survey
shall include a list of IUs which do not meet the definition of
"Significant" and an explanation of why such IUs are not
"Significant"

8. Defendant County shall prepare a report describing the Industrial User Survey procedures implemented, detailing the results of the Survey, and identifying any additional SIUs, CIUs

IUs and their respective compliance status Defendant County shall submit this report to U.S. EPA Region II and the New York State Department of Environmental Conservation "DEC" no later than one year from the date of entry of the Consent Decree, U.S EPA Region II may designate additional IUs as SIUs, consistent with the Rules and Regulations Relating to the Use of the Public Sewer System, based on the results of the Industrial User Survey or other information available to U.S. EPA Region II, the State of New York and the Defendant County

B. Wastewater Discharge Permits

9 A. As of the date of entry of this Consent Decree, Defendant County shall have issued wastewater discharge permits that satisfy the requirements of 40 C.F.R. § 403.8(f)(1 (iii), to

SIUs identified in the Defendant County's March 1998 Annual Pretreatment Report

B. Within fifteen (15) months from the date of entry of the Consent Decree, the Defendant County shall issue wastewater discharge permits that satisfy the requirements of 40 C.F.R. § 403.8(f)(1 (iii), to all SIUs identified in the Industrial User Survey conducted pursuant to Paragraph 7. In particular, Defendant County shall ensure that all permits issued

to SIUs that are subject to national categorical pretreatment standards contain limits that reflect the most stringent limits (categorical pretreatment standards or local limits) and all SIU permits contain local limits, monitoring, reporting and all other requirements set forth in 40 C.F.R. 403.8(f)(1)(iii).

10. Defendants shall not include schedules in permits that extend the deadline for compliance with national categorical pretreatment standards or any pretreatment standard in 40 C.F.R. § 403.5. Defendants may only include compliance schedules in permits when necessary for the attainment of new or revised categorical pretreatment standards or new or more stringent local limits. In situations when an IU is in violation of a national categorical pretreatment standard, or any other pretreatment standard or requirement, the Defendant County shall establish an expeditious compliance schedule in an enforcement order, not in a permit, and collect penalties as required by the Defendant County's approved Enforcement Response Plan (ERP). The Defendant County shall state in any such enforcement order that notwithstanding any compliance schedule, the IU remains subject to federal, state and/or local enforcement for any past, present or future violation of a national pretreatment standard or requirement

11. Within ninety (90) days from the date of entry of this Consent Decree, Defendant County shall submit a report detailing

compliance status of each SIU identified by the Defendant County prior to the entry of this Consent Decree. Such report shall state that the Defendant County has verified the compliance status of each SIU with sampling and analysis conducted by Defendant County during the twelve month period immediately preceding entry of the Consent Decree. All sampling and analysis performed shall be in accordance with 40 C.F.R. Part 136

C. Compliance Monitoring

12. By January 1, 1999, Defendant County shall have begun and shall continue to conduct unannounced annual inspections of SIUs, complete an inspection report, and place that report in the County's IU files within thirty (30) days of the date of the annual inspection. Prior to the actual inspection, an unannounced inspection shall not be communicated by any representative of Defendant County directly or indirectly to the any person or entity associated therewith, or to any person or entity other than State or Federal representatives. Each annual inspection shall include a sampling, visual inspection and verification of all industrial processes that generate a wastewater discharge, a visual review of all pretreatment and laboratory equipment, a records review of monitoring, Quality Assurance/Quality Control measures, and chain-of-custody records, a review of all outfalls and sampling points to determine the status of compliance with permit conditions. Each annual

inspection, sampling, verification and review and the results thereof shall be recorded in written form and made available to

EPA or the State on request. No later than January 31, 2000 Defendant County shall submit a certification in writing to U.S. Region II and DEC stating that it has inspected, at least once, each SIU as required by this paragraph.

13. a. Within one year from the date of entry of this Consent Decree, and at least annually thereafter, Defendant County shall take an unannounced sample of the wastewater discharge of each permitted SIU and analyze the sample for all pollutants regulated in the SIU's permit, all pollutants regulated by applicable categorical pretreatment standards, local limits and the prohibitions in 40 C.F.R. § 403.5, in order to determine the status of compliance with effluent limitations.

b. In the event of a SPDES effluent limitation violation, Defendant County shall take an unannounced sample of the wastewater discharge of any permitted SIU and analyze it for the SPDES effluent limitations violated by the Defendant County when the Defendant County determines that such violation may potentially be attributable to said SIU's industrial discharge. If the Defendant County determines that such violation is not potentially attributable to industrial discharges, it shall include its determination, including the rationale for such a determination, in the quarterly report which covers the affected

period Prior to the actual sampling, an unannounced sampling shall not be communicated by any representative of Defendant County directly or indirectly to the SIU, any person or entity associated therewith, or to any person or entity other than State or Federal representatives

Within one year from the date of entry of this Consent Decree, and at least once every two years thereafter, Defendant County shall evaluate each SIU to determine whether it needs a plan to control slug discharges as defined at 40 C.F.R

403.8(f)(2)(v Within one year from the date of entry of this Consent Decree, Defendant County shall submit a certification in writing to U.S. EPA Region II and DEC stating that it has evaluated each SIU in accordance with 40 C.F.R. §403.8(f)(2)(v and EPA Guidance Manual "Control of Slug Loadings to POTWs" dated February 1991 to determine whether it needs a slug discharge control plan, notified the SIU of the need for such plan, and that each such plan has been developed and implemented.

D Revision of Local Limits

Defendant County submitted a document entitled "Technical Evaluation of Local Discharge Limits" ("Technical Evaluation") as part of a March 1996 submission, for review by U.S. EPA Region II. This Technical Evaluation sets forth recommendations in Section 4.2. EPA is in the process of reviewing this Technical Evaluation and its recommendations.

Within sixty (60) days of EPA's comments on the Technical Evaluation, Defendant County will respond to said comments and make any revisions, if necessary. Within sixty (60) days of EPA's acceptance of the Technical Evaluation, or a revised Technical Evaluation, Defendant County shall revise its local limits and submit a proposed local limits modification to U.S. EPA Region II for review as a substantial modification pursuant to 40 C.F.R. § 403.18(b)(1). A copy of the modification submittal also shall be sent to DEC.

16 Defendant County shall review the technical analysis of all local limits in order to determine if local limits need to be revised or otherwise made more stringent whenever there is: (1) a change to SPDES permit limit which results in a more stringent limit or a new limit, or (2) chronic exceedances of the SPDES permit or recurrent process inhibition or recurrent interferences which are potentially attributable to industrial discharges, or (3) a change in sludge disposal requirements. Any local limits analysis must be done in compliance with the U.S. EPA's "Guidance Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program" (December 1987) and "Supplemental Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program" (May 1991), and any supplements or modifications to such manuals. The Defendant County shall determine whether or not changes to the

local limits are required. All proposed changes to local limits which make a local limit less stringent are substantial modifications to the Pretreatment Program and must be submitted to U.S. EPA Region II for approval pursuant to 40 C.F.R. § 403.18(b) 1. All other proposed changes to local limits which are non-substantial must be submitted to U.S. EPA Region II for approval pursuant to 40 C.F.R. § 403.18(b) (2). A copy of any such proposed modifications also shall be sent to DEC.

Defendant County shall notify, in writing, each IU of the revised local limits and/or modifications to the Defendant County's Pretreatment Program enacted by the Defendant County within sixty (60) days following the Defendant County's enactment of the revised local limits and/or modifications to the Defendant County's Pretreatment Program.

Within three 3 months of enacting any revision to the local limits, Defendant County shall issue, reissue or modify each SIU wastewater discharge permit to include the revised local limits. Defendant County shall establish an enforceable compliance schedule for each IU that cannot comply with the revised local limits within the period. All compliance schedules shall be established in conformance with Paragraph 10 above. The compliance schedule shall result in full compliance with all revised local limits within one year of notification.

Defendant County shall not issue, reissue or modify, either orally or in writing, any wastewater discharge permit to include effluent discharge limits which are less stringent than the local limits which were approved as part of the Defendant County's Pretreatment Program in June 1984 or which have been approved and modified pursuant to the provisions of this Consent Decree, except in compliance with 40 C.F.R. § 403.18(b). Notwithstanding any provisions in the Defendant County's Pretreatment Program approved in June 1984 and modified in October 1993, Defendant County shall not waive any of the above referenced local limits for any SIU unless explicitly approved in writing by EPA in advance. This prohibition also shall apply to all new SIUs which begin to discharge after the date of entry of this Consent Decree.

E. Enforcement

Defendant County shall take timely, appropriate, and effective enforcement action, as described in and required by the approved Enforcement Response Plan. Defendant County shall escalate its enforcement responses (i.e., take more severe enforcement actions in response to continuing violations) until an IU returns to full compliance with all applicable pretreatment standards and requirements. At a minimum, the Defendant County shall initiate an enforcement action as specified in the approved ERP including seeking penalties, if any, in the amounts specified

in the ERP against all IUs that are in noncompliance. Such penalties shall take into account all factors identified in the ERP and shall seek to recover, at a minimum, the economic benefit that the IU may have obtained as a result of its failure to timely install and operate all necessary pretreatment equipment and/or to sample and analyze in accordance with the IU permit, and an additional amount as a component of a penalty that reflects the gravity of the violation in order to create a deterrent to noncompliance. The expense and extent of analysis of economic benefit should bear a direct relationship to the significance of the violation.

21 After completion of the Industrial User Survey required in Paragraph 7, Defendant County shall commence a formal enforcement action against each IU that has failed to submit the wastewater discharge permit application required by the Defendant County's Pretreatment Program, and shall seek a penalty in an amount consistent with the approved ERP. Once the application is completed, additional relief, including civil penalties, will be sought for any substantive noncompliance with federal categorical pretreatment standards and for local limits.

F Compliance Certification

22. No later than eighteen (18) months from the date of entry of this Consent Decree, Defendant County shall certify to U.S. EPA Region II that all of its SIUs are currently in full

compliance, in accordance with Paragraph 23. Alternatively, if any SIU is not in full compliance, the County shall certify an appropriate enforcement action has been initiated and diligently pursued in accordance with the ERP. Defendant County shall base this certification on monitoring data collected by the Defendant County and the IUs within the previous six (6) months. A copy of the certification also shall be sent to DEC.

23. For purposes of this subsection, "full compliance" means that the SIU has demonstrated three (3) consecutive months of compliance with all pretreatment standards and reporting requirements. All sampling data collected by the Defendant County and all Self-Monitoring Report data submitted by the SIUs in accordance with the requirements contained in their IU permits during this period shall be reviewed to determine such compliance. The Defendant County shall confirm each SIU's compliance status by performing at least one sampling during three month period.

24. The certification required by this subsection may be submitted in parts, with a particular certification submission covering a subset of the Defendant County's SIUs, provided certifications covering all SIUs are completed by the date specified in Paragraph 22.

G. Program Resources

25. Defendant County shall commit sufficient resources and qualified staff to the implementation of an effective pretreatment program. Within ninety (90) days of entry of this Consent Decree, Defendant County shall certify in writing to U.S EPA Region II that it has adequate resources and staff to fully implement its Pretreatment Program and comply with this Consent Decree. Such certification shall include a statement detailing the number of full time equivalent (FTE) employees necessary to fully implement the Pretreatment Program. Attached hereto as Attachment A is a list of positions and position descriptions that are integral to effective administration of the current Pretreatment Program. A copy of the certification also shall be sent to DEC.

V. MONITORING AND REPORTING

26 Defendant County shall provide quarterly progress reports to the U.S. EPA Region II and DEC. Defendant County shall submit the first quarterly report no later than sixty (60) days after entry of the Consent Decree. Subsequent reports shall be received by EPA no later than thirty (30) days after the close of the preceding calendar quarter (i.e., April 30, July 30, October 30, and January 30). In the progress reports Defendant County shall fully describe its pretreatment implementation activities during the calendar quarter, whether it has complied

fully and timely with all the requirements specified in Section IV of this Consent Decree, and any other activities related to complying with this Consent Decree. These quarterly progress reports are in addition to any other reporting requirements established in the County's Pretreatment Program, its NPDES permits or the specific provisions of Section IV of this Consent Decree.

27. Defendant County shall include in each quarterly progress report the following information:

a. An updated list of all IUs, including identification of SIUs, and all categorical standards that apply to each SIU, including a description of any new or potential IUs which the Defendant County knows, or should know in the exercise of due diligence, are seeking to connect to the POTW, and a certification as to whether the IU will be able to achieve compliance with all applicable Federal, State and local pretreatment requirements. "Potential Industrial User," as used herein, shall mean an entity coming within the definition of "Industrial User" contained in the Defendant County's Pretreatment Program, that has demonstrated an interest in locating within the area by, e.g., applying to the Defendant County for a building permit or a business license, or by entering into a contract, of which the Defendant County has knowledge, to acquire premises by purchase or lease;

b. A list of all permits issued to IUs in accordance with the approved program by the Defendant County during the reporting period;

c. A list of all reports of scheduled, non-scheduled, unannounced, and any other industrial inspections and sampling completed by the Defendant County;

d. An assessment of the compliance status of each including a description of the results of all pretreatment inspection and sampling performed, a description of each SIU's compliance or noncompliance with pretreatment reporting requirements, permit requirements, discharge standards, and compliance schedules as well as an identification of each SIU which is in significant noncompliance, as defined 40 C.F.R. § 403.8(f)(2)(vii

e. A descriptive summary of compliance and enforcement activities undertaken by Defendant County during the reporting period, including, but not limited to, any actions taken to enforce the Pretreatment Program, such as Notices of Violation compliance meetings, fines including the amount of penalty collected Administrative Orders, permit revocations, injunctions, disconnections, judicial actions (criminal and civil), as well as the outcome of those actions and the number of which any action, or part thereof, took from initiation to

conclusion including a description of the nature of the violation at issue.

f. The status of sampling, development of local limits, issuance of revised pretreatment permits, and other activities related to the development of revised local limits, ERP sewer use ordinance, and issuance of revised pretreatment permits

g. A summary description of staffing, including number of FTE employees in the positions listed in Attachment A

28. Defendant County shall perform all analyses associated with, or required by, this Consent Decree pursuant to the analytical procedures approved in 40 C.F.R. Part 136. Defendant County shall take influent and effluent samples on a 24-hour composite basis unless grab samples are otherwise specified in SPDES permits or 40 C.F.R. Part 136.

VI. CIVIL PENALTY

29. Defendant County shall pay a civil penalty in the amount of \$624,000 in full satisfaction of the United States and the State of New York's claims for civil violations as alleged in the Complaints filed herein through the date of lodging of this Decree

a. Defendant County shall, within thirty (30) days after the entry of this Consent Decree, tender to the U.S.

Attorney's Office in the Northern District of New York, a money order or certified check noting the civil action number of this case, in the amount of \$468,000 , payable to the "Treasurer United States of America" to the following address:

United States Attorney
Northern District of New York
900 Federal Building
100 S. Clinton Street
Syracuse, New York 13260

Defendant County shall include a transmittal letter with the payment

b. Defendant County shall, within thirty (30) days after the entry of this Consent Decree, tender to the State of New York a money order or certified check in the amount of \$156,000 payable to:

Central New York Regional Planning
and Development Board ("CNYRP&DB")
126 North Salina Street
100 Clinton Square
Suite 200
Syracuse, New York 13202

Such payment shall be for deposit into an escrow account established and administered by CNYRP&DB for use in nonpoint source reduction projects to be developed by CNYRP&DB

c. Defendant County shall send a copy of the transmittal letter and check to the addresses specified in Section XV

d Upon entry, this Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection

of any unpaid amounts in accordance with Rule 69 of the Federal Rules of Civil Procedure and the Federal Debt Collection Act, 28 U.S.C. §§ 3001-3008. If the civil penalty provided for in Paragraph 29.a. is not timely paid, the United States shall be entitled to: (a) interest on any overdue amount from the due date at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and (b) any amounts due under 28 U.S.C. § 3011 and any other applicable authority as a result of Defendant County's failure to make timely payment of the specified penalty

VII. STIPULATED PENALTIES

30. If Defendant County fails to comply fully and timely with any requirement of this Consent Decree, Defendant County shall pay stipulated penalties automatically and without demand, as set forth below:

a. For failure to comply with any requirement of Paragraphs 8, 14, 11, 17, 22, 25, 26, 27 and 28 in Section IV of this Consent Decree, Defendant County shall pay the following:

<u>Number of Days Not in Compliance</u>	<u>Stipulated Penalty Per Day, Per Violation</u>
1 through 30 days	\$500
31 through 60 days	\$1,500
61 through 180 days	\$3,000
181 days or more	\$12,000

b. For failure to comply with any requirement of the Pretreatment Program or any requirement in Paragraphs 7, 9, 10, 13(a), 15, 18, 19, and 21 in Section IV and Paragraph 32 in Section VII of this Consent Decree, Defendant County shall pay the following:

<u>Number of Days Not in Compliance</u>	<u>Stipulated Penalty Per Day, Per Violation</u>
1 through 30 days	\$750
31 through 60 days	\$3,000
61 through 180 days	\$6,000
181 days or more	\$25,000

c. EPA shall give written notice to Defendant County when EPA determines that Defendant County has failed to comply with any requirement of Paragraphs 13b, 16 and 20 in Section IV of this Consent Decree. Defendant County shall pay the following:

<u>Number of Days not in Compliance</u>	<u>Stipulated Penalty Per Day, Per Violation</u>
1 through 30 days	\$750
31 through 60 days	\$3,000
61 through 180 days	\$6,000
181 days or more	\$25,000

purposes of Subparagraph c only, the first day of noncompliance shall be the date on which EPA's notice is received by the County.

31. If Defendant County fails to comply with the Supplemental Environmental Project ("SEP" described in Section IX and Attachment B of this Consent Decree it shall pay stipulated penalties as set forth in Paragraph 43 of Section IX

32. In any dispute over the applicability of stipulated penalties, Defendant County shall bear the burden of proving by clear and convincing evidence that it is not subject to stipulated penalties

33. Defendant County shall pay stipulated penalties by certified or cashier's check, made payable to "Treasurer, United States of America," and tender the payment to the U.S. Attorney's Office, in the Northern District of New York, to the address specified in Paragraph 29.a., by the 15th of the month following the month in which the violation(s) occurred, together with a letter summarizing the violation(s) for which the penalty payment is made Defendant County shall send a copy of the transmittal letter and the check to the addresses specified in Section XIV

34. Stipulated penalties are not Plaintiffs exclusive remedy for violations of this Consent Decree. Plaintiffs expressly reserve and shall be entitled to seek all other forms of relief, whether monetary and/or injunctive, available pursuant to statute, regulation or this Consent Decree, to which they are entitled

VIII. LATE PAYMENT CHARGE

Defendant County shall pay interest to the United States Treasury, at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, for any delinquent payment of a stipulated penalty. In addition, after the first thirty (30) days that any amount of a stipulated penalty is overdue, Defendant County shall pay a late payment charge of six (6) percent on the amount of any penalty that is overdue; this late payment charge shall be computed on a quarterly basis.

IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT

Defendant County shall complete the following supplemental environmental project "SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvements.

a. Defendant County shall implement a nonpoint source pollution prevention project in the Onondaga Lake drainage area as a SEP. The project will lead to the development and implementation of a Best Management Practices (BMP) Program to reduce phosphorous erosion from agricultural sources in the Onondaga Lake drainage area. The anticipated environmental benefits include improved water quality in Onondaga Lake. The SEP is more specifically described in the scope of work (hereinafter, the "Scope of Work" , attached hereto as Attachment B and incorporated herein by reference

b Defendant County shall complete the SEP as set forth in compliance schedule set forth in Attachment B and incorporated herein by reference.

37 The total expenditure for the SEP shall be not less than \$750,000 in accordance with the specifications set forth in the Scope of Work. Defendant County shall include documentation of the expenditures made in connection with the SEP as part of reports required pursuant to Paragraph 39 below.

38. Defendant County hereby certifies that, as of the date of this Consent Agreement, Defendant County is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Defendant County required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case. Defendant County further certifies that it has not received, and is not presently negotiating to receive, credit, mitigation, or other benefit for the SEP in any other enforcement action; nor has Defendant County received any federal or state grant money or other federal or state sources of money for use in performing the SEP and Defendant County shall not seek to obtain any federal or state grant money or other federal or state sources of money for such use

39. Defendant County shall submit the following reports:

a. Defendant County shall submit an initial report within thirty (30) days of the entry of the Consent Decree which

includes a detailed scope of work for implementation of the AEM plans described in Attachment B, including the schedule of work each Tier, with the start and completion dates for implementation.

b Defendant County shall submit quarterly SEP Reports to EPA for the period of time commencing with the start of the SEP until completion of the SEP. Such reports shall cover the following periods: January through March; April through June; July through September; October through December. Each quarterly report shall be due to EPA no later than thirty (30) days after last day of the respective quarterly period which is covered by the report. Each quarterly SEP Report shall contain the following information:

- i) A detailed description of the completed SEP milestones which were implemented during the quarterly period covered by the report, including a representative survey form, worksheet, basic plan and detailed plan, as appropriate;
- (ii) A detailed description of any implementation problems encountered and detailed solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks.
- iv) A certification that no federal or state grant monies or other federal or state sources of money were used to carry out the work required under the SEP.

c Defendant County shall submit a final SEP Completion Report within three months of completion of the SEP, as set forth

in the Scope of Work. Such final report shall include the following:

- (i) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree;
- (ii) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- (iii) A summary of the final cost of the completed SEP, and a listing of any itemized costs and the supporting documentation for such costs not previously reported in a quarterly SEP report.

d. Defendant County agrees that failure to submit the SEP Completion Report shall be deemed a violation of this Consent Decree, and Defendant County shall become liable for stipulated penalties pursuant to paragraph 8 below.

e. Defendant County shall submit all notices and reports required by this paragraph in the manner and to the persons specified in Section XV of the Consent Decree.

40. Defendant County agrees that EPA or DEC may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the terms hereof and the reports required herein.

41. Defendant County shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted pursuant to this Consent Decree, and Defendant County shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a

request for such information. In all documents or reports including, without limitation, the SEP Report, submitted to EPA pursuant to this Consent Agreement, Defendant County shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

42. Following receipt of the final SEP Completion Report described in Paragraph 39 above, EPA will do one of the following: (i) accept the report; (ii) reject the report, and notify Defendant County, in writing, of deficiencies in the report and grant Defendant County an additional thirty 30) days in which to correct any deficiencies. EPA may reject the final SEP Completion Report due to deficiencies in the report or deficiencies in Defendant County's completion of the SEP in

accordance with the Scope of Work and may seek stipulated penalties in accordance with Paragraph 43 herein.

b. If EPA elects to exercise option (ii) above or rejects the final SEP Completion Report, EPA shall permit Defendant County the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Defendant County shall have an additional thirty (30) days from the receipt by the EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Defendant County, which decision shall be final and binding upon Defendant County. Defendant County agrees to comply with any requirements imposed by EPA reasonably related to the correction of any such deficiency or failure to comply with the requirement set forth in the Scope of Work, Attachment B of this Consent Decree. In the event the SEP is not completed as contemplated herein, as determined by EPA stipulated penalties shall be due and payable by Defendant County to EPA in accordance with Paragraph 43 herein.

43. In the event that Defendant County fails to comply with any of the terms or provisions of this Consent Decree relating to the performance of the SEP described in Paragraph 36 above and/or to the extent that the actual expenditures for the SEP do not

equal or exceed the cost of the SEP described in Paragraph 37 above, Defendant County shall be liable for stipulated penalties according to the provisions set forth below:

a Except as provided in subparagraph 43.b., immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Decree, Defendant County shall pay stipulated penalty to the United States in the amount of \$416,000.

b. If the SEP is not completed satisfactorily, but U.S EPA determines that the Defendant County: (i made good faith and timely efforts to complete the project; and (ii has certified, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Defendant County shall not be liable for any stipulated penalty

c. If the SEP is satisfactorily completed, but the Defendant County spent less than 90 percent of the amount of money required to be spent for the project, Defendant County shall be required to complete an additional nonpoint source SEP implementing an additional BMP Program to reduce phosphorous erosion from agricultural sources in the Onondaga Lake drainage area Such SEP shall be in the amount equal to the difference between \$750,000 and the amount spent. Such SEP must be submitted to the U.S. EPA Region II within thirty (30) days of the

submission of the SEP Completion Report for U.S. EPA's approval U.S. EPA will either accept the supplemental SEP or reject the supplemental SEP. If U.S. EPA rejects the supplemental SEP, the Defendant County shall have an additional thirty (30) days to modify its submission in accordance with any comments received from U.S. EPA or submit a new supplemental SEP. If U.S. EPA does not approve the new/revised supplemental SEP, the Defendant County shall pay a stipulated penalty equal to the difference between \$750,000 and the amount spent on the original SEP.

d. If the SEP is satisfactorily completed, and the Defendant County spent at least 90 percent of the amount of money required to be spent for the project, Defendant County shall not be liable for any stipulated penalty.

e. For failure to submit either the initial report required by Paragraph 39.a. and the SEP Completion Report required by Paragraph 39.c. above, Defendant County shall pay a stipulated penalty in the amount of \$1,000 for each day after its due date until the report is submitted.

f. For failure to submit any quarterly SEP Report required by paragraph 39.b. above, Defendant County shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due until the report is submitted.

44. Stipulated penalties for Subparagraphs 43.e. and 43.f. above shall begin to accrue on the day after performance is due,

and shall continue to accrue through the final day of the completion of the activity.

The determinations of whether the SEP has been satisfactorily completed and whether the Defendant County has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA

46 Defendant County shall pay stipulated penalties accrued pursuant to the SEP requirements in Paragraphs 36 through 44 within fifteen (15) days of receipt of written demand by U.S. EPA for such penalties. Defendant County shall pay such penalties by certified or cashier's check, made payable to "Treasurer, United States of America," and tender payment to the U.S. Attorney's Office, in the Northern District of New York, to the address specified in Paragraph 29.a. of the Consent Decree. Defendant County shall send a copy of the transmittal letter and the check to the addresses specified in Section XV of the Consent Decree. Interest and late charges shall be paid as stated in Section VIII of the Consent Decree

Any public statement, oral or written, in print, film, or other media, made by Defendant County making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency and the State of New York for alleged violations of the Federal

Clean Water Act, 33 U.S.C. §1251 et seq. and the New York State Environmental Conservation Law §§17-0303(4)(c), 71-1927, 71-1929, and 71-1931.

48. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Consent Decree the provisions of Section XII of the Consent Decree shall be controlling.

X. FAILURE OF COMPLIANCE

49. The United States and the State of New York do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the Defendant County's complete compliance with this Decree will result in compliance with the Act or its SPDES permit. Notwithstanding the U.S. EPA Region II's review and approval of any plans, procedures, programs program modifications, limits, or other proposals formulated pursuant to this Decree, the Defendant County shall remain solely responsible for compliance with the terms of the Act, this Decree, its SPDES permits, its approved Pretreatment Program, the pretreatment regulations at 40 C.F.R. Part 403, and all applicable state and federal regulations

XI. DISPUTE RESOLUTION

50. If the parties are unable to agree upon any procedure, plan, standard, requirement, or other matter described herein, or in the event a dispute should arise among the parties regarding

the implementation of this Decree, the Defendant County shall act in a manner consistent with the position of the United States unless the Defendant County files a petition with the Court for resolution of the dispute within thirty (30) days of receipt of the United States final position concerning the dispute. In its petition to the Court, the Defendant County shall set out the nature of the dispute with a proposal for its resolution. The United States shall have thirty (30) days to file a response with an alternative proposal for resolution.

51. The United States shall consult with the State of New York regarding any disputes which arise concerning the implementation of this Consent Decree prior to communicating a final position to the Defendant. The State shall have thirty (30) days to file a response to the Court regarding any proposal made by Defendant in accordance with Paragraph 50 above.

52 In any such dispute, the Defendant County shall have the burden of proving by clear and convincing evidence that its proposal will achieve compliance with the terms and conditions of this Consent Decree, its permits and the Act in an expeditious manner, and that implementation of its proposal will result in equivalent or greater environmental protection than would implementation of the United States' position

XII. DELAYS OR IMPEDIMENTS TO PERFORMANCE
(Force Majeure)

53 "Force majeure," for purposes of this Consent Decree is defined as an act of god that delays or prevents performance of any obligation of this Consent Decree despite Defendant County's best efforts to fulfill the obligation. The requirement that the Defendant County exercise "best efforts" to fulfill the obligation includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible "Force Majeure" does not include financial inability to comply with the terms of this Consent Decree. At the written request of Defendant County, U.S. EPA may extend, in writing, any applicable date for compliance for a period no longer than that warranted by the force majeure event, or waive stipulated penalties for the exceedance or other violation

54. A copy of the Defendant County's request made pursuant to Paragraph 53 also shall be sent to DEC by the County. The U.S. EPA Region II shall consult with DEC prior to granting or denying the Defendant County's request.

55. If EPA denies Defendant County the relief sought pursuant to Paragraph 53, U.S. EPA's position shall control unless Defendant County invokes the Dispute Resolution procedures

of this Consent Decree within fifteen (15) days of the receipt of such denial. Defendant County shall have the burden of proving by clear and convincing evidence that any event is caused solely by circumstances beyond the control of, and without the fault of, Defendant County or of any entity controlled by Defendant County, including Defendant County's consultants and contractors, that Defendant County exercised due diligence in minimizing the delay, and that, as a result of the delay, a particular extension period is appropriate. Financial, economic, or business conditions, or changes in the same, or increased costs or expenses, shall not, in any event, justify or delay or be grounds for excusing any violation. Delay in the achievement of any interim step specified in this Consent Decree shall not justify or excuse delay in the achievement of subsequent steps.

56. Defendant County shall provide written notice of any request for application of this section to U.S. EPA Region II and DEC within ten (10) working days of the occurrence of Defendant County's knowledge of the alleged force majeure event. Such request shall describe in detail: the anticipated length of the delay, violation or exceedance; the precise cause or causes of the delay, violation or exceedance; and the measures taken by Defendant County to prevent or minimize any such delay, violation, or exceedance. Failure by Defendant County to comply with the notice requirements of this paragraph shall render any

claim of force majeure application void and of no effect as to the particular incident involved and shall constitute a waiver of Defendant County's right to request the application of this section to such incident or delay, violation, or exceedance

57. Increased cost or expenses associated with the implementation of this Decree, changed financial circumstances, or technical problems shall not serve as a basis for changes in this Decree or extensions of time under this Decree

XIII. RIGHT OF ENTRY

58. Until termination of this Consent Decree, U.S. EPA and the State of New York and/or their respective representatives, contractors, consultants, and the attorneys for the United States and DEC the State of New York shall have the authority to enter any facility covered by this Decree, during reasonable hours, upon presentation of credentials to the manager(s) of the facility, or in the manager's absence, to the highest ranking employee present on the premises, for the purposes of

- a Monitoring the progress of activities required by this Decree;
- b. Verifying any data or information submitted to the U.S EPA, Region II and DEC in accordance with the terms of the Decree;
- c Obtaining samples, and upon request, splits of any samples taken by the County or its contractors and consultants; or
- d. Assessing the County's compliance with this Decree.

This provision in no way affects or reduces any rights of entry or inspection that the United States has under any Federal law or regulation or that DEC the State of New York has under any State law or regulation.

XIV. FUNDING

59. Performance of the terms of this Consent Decree by Defendant County is not conditioned on the receipt of any Federal or State grant funds or loan. In addition, the County's performance is not excused by the failure to obtain, or shortfall of, any Federal or State grant funds or loan, or by the delay of processing of any applications for the same

FORM OF NOTICE

60. Notifications, reports or other communications with EPA, the State or the United States shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested. Except as specified otherwise, when written notification to or communication with the United States U.S EPA Region II, the State or the Defendant County is required by the terms of this Consent Decree, it shall be addressed as follows

As to the United States

Joel Gross
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Ben Franklin Station
Washington, D.C. 20044
Reference Case No. 90-5-1-1-3597

Craig A. Benedict
Assistant U.S. Attorney
Northern District of New York
900 Federal Building
100 South Clinton Street
Syracuse, New York 13260

As to U.S. EPA Region II:

Patrick M. Durack
Chief, Water Compliance Branch
U.S. Environmental Protection Agency
Region II
290 Broadway - 20th Floor
New York, New York 10007-1866

As to the State

Steve Eidt
Regional Water Quality Engineer
New York State Department of
Environmental Conservation
Region 7
615 Erie Boulevard West
Syracuse, New York 13204-2400

Kathleen Liston Morrison
Assistant Attorney General
Office of Attorney General
The Capitol
Albany, New York 12224

As to Defendant County:

Jon A. Gerber
County Attorney
County of Onondaga
Department of Law
John H. Murray Civic Center
421 Montgomery Street, 10th Floor
Syracuse, New York 13202

XVI. NONWAIVER PROVISIONS

61 This Consent Decree is neither an NPDES/SPDES permit a modification of any existing NPDES/SPDES permit and shall be interpreted to be such permit. The pendency or outcome of any proceeding concerning the issuance, re-issuance or modification of any, NPDES permit shall neither affect nor postpone the Defendant County's duties and obligations as set forth in this Consent Decree

62 This Consent Decree in no way alters or relieves Defendant County's responsibility to comply with any and all applicable Federal, State or local laws, regulations, or permit

conditions. The parties agree that the Defendant County is responsible for achieving and maintaining complete compliance with all applicable Federal and State laws, regulations, and permits, and that compliance with this Decree shall not be a defense to any actions commenced pursuant to such laws and regulations

The United States and the State each, respectively reserve its rights to bring an action for any violation of law or regulation not specifically the subject of the Consent Decree as set forth in the Complaints filed in this matter. Nothing in the Consent Decree shall preclude the United States or the State from instituting any administrative or judicial action against Defendant County or taking any other enforcement action against Defendant County except for these violations which have occurred through the effective date of this Consent Decree and which are specifically alleged in the Complaints filed in this matter. Nothing in this Consent Decree is intended to, nor shall be construed to, resolve any criminal liability of the Defendants

Plaintiffs expressly reserve the right to pursue all remedies available to them to remedy all violations of the Act not specifically pled in the Complaints filed in this matter

65. Nothing herein shall be construed to limit the authority of the United States or the State of New York to undertake any action against any person, including the Defendant

County, in response to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment

Nothing herein shall be construed to limit the authority of the United States to act under Section 308 of the Act, 33 U.S.C. § 1318

This Consent Decree does not limit or affect the rights of the Plaintiffs or Defendants against any third parties

XVII. RESERVATION OF RIGHTS

The United States reserves, and this Consent Decree is without prejudice to, any rights or claims that the United States has or may have against any party under the Clean Water Act or any other federal, state or local law

XVIII. MODIFICATION

This Consent Decree represents the entire agreement among the parties. Except as provided herein, there shall be no modification of this Consent Decree without the written agreement of all the parties.

XIX. COSTS OF SUIT

Each party to this action shall bear its own costs and attorney's fees

XX. SEVERABILITY

The provisions of this Consent Decree shall be severable, and should any provisions be declared by a court of

competent jurisdiction to be inconsistent with State or Federal law and, therefore, unenforceable, the remaining provisions shall remain in full force and effect.

XXI. PUBLIC NOTICE

72. The parties acknowledge and agree final approval and entry of this Consent Decree is subject to the requirements of 28 C.F.R § 50.7, which provides that the United States must give notice of proposed Consent Decrees to the public and that the public shall have at least thirty days in which to submit comments regarding the Consent Decree. The United States reserves the right to withdraw from this Consent Decree if public comments disclose facts or considerations indicating that the decree is inappropriate, improper, or inadequate. The Defendants, upon signature of this Consent Decree by their respective authorized representatives, may not withdraw from the agreement embodied in this Consent Decree and consent that, at the conclusion of the public comment period, the Consent Decree may be entered without further notice

XXII. TERMINATION

73. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution or modification. During the term of this Consent

Decree, any party may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

74. Except as set forth in Paragraph 75, this Consent Decree shall terminate by motion of any party to the Court after of the following has occurred:

- a. Defendant County has achieved compliance with all provisions contained in this Consent Decree and has maintained compliance with each and every provision of this Consent Decree for twelve (12) consecutive months;
- b. Defendant County has paid all penalties due hereunder and no penalties are outstanding or owed to the United States or to the State of New York;
- c. Defendant County has certified compliance pursuant to a. and b. above to the Court and all parties; and
- d. U.S. EPA and the State, within 30 days of receiving such certification from the Defendant County, have not contested, in writing, that such compliance has been achieved. If U.S. EPA or the State disputes Defendants' full compliance, the dispute resolution provision shall be invoked and the Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

75. This decree shall remain in full force and effect with respect to Section IX and Attachment B relating to the implementation and completion of the SEP, until such time as the is Completed and all stipulated penalties, if any are paid or Defendant County's obligation to implement the SEP is no longer extant, at which time either party may, by motion seek to terminate the portion of the Decree relating to Section IX and Attachment B

XXIII. CERTIFICATION

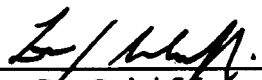
76. Each signatory to this Consent Decree certifies that he or she is fully authorized by each party whom he or she represents to enter into the terms and conditions of this Consent Decree, and to execute and legally bind that party to the Consent Decree.

SO ORDERED: Judgment is hereby entered in accordance with the foregoing terms and provisions of this Consent Decree on this day of 1999.

UNITED STATES DISTRICT JUDGE

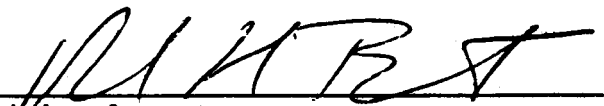
[First Signature Page of Four to the Consent Decree in United States and State of New York v. Onondaga County, et al., Civ. No 91-CV-477]

FOR PLAINTIFF THE UNITED STATES OF AMERICA:



Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

5/15/99
Dated




Richard H. Boote
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

6/7/99
Dated

Thomas Maroney
United States Attorney
Northern District of New York

By:

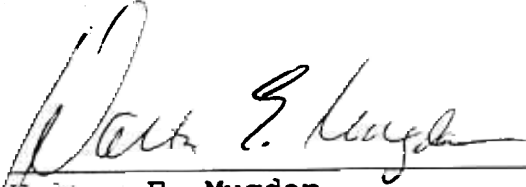


Craig Benedict
Assistant United States Attorney
Northern District of New York
U.S. Court House
100 S. Clinton Street
Syracuse, New York 13260

6/8/99
Dated

[Second Signature Page of Four to the Consent Decree in United States and State of New York v. Onondaga County, et al., Civ. No. 91-CV-477]

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

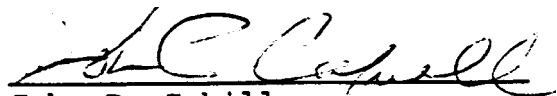


Walter E. Mugdan
Regional Counsel
United States Environmental Protection
Agency, Region II
290 Broadway
New York, New York 10007-1866

6/1/99
Dated

[Third Signature Page of Four to the Consent Decree in Untied States and State of New York v. Onondaga County, et al., Civ. No. 91-CV-477]

FOR PLAINTIFF, STATE OF NEW YORK:



John P. Cahill
Commissioner
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233

6/3/99
Dated

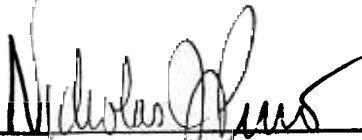


Kathleen Liston Morrison
Assistant Attorney General
Office of the Attorney General
The Capitol
Albany, New York 12244

6/3/99
Dated

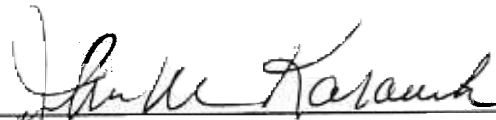
[Fourth Signature Page of Four to the Consent Decree in United States and State of New York v. Onondaga County, et al., Civ. No. 91-CV-477]

FOR DEFENDANTS, ONONDAGA COUNTY, NEW YORK; COMMISSIONER OF
ONONDAGA COUNTY DEPARTMENT OF DRAINAGE AND SANITATION:



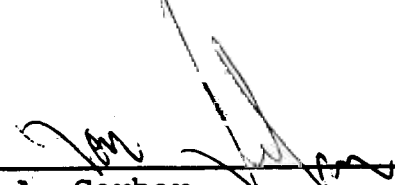
Nicholas J. Pirro
County Executive
County of Onondaga, New York

April 19, 1999
Dated



John M. Karanik
Commissioner, Department of Drainage
and Sanitation
County of Onondaga
650 Hiawatha Boulevard, West
Syracuse, New York 13204-1194

April 25, 1999
Dated



Jon A. Gerber
Attorney for County of Onondaga
Department of Law
John H. Murray Civic Center
421 Montgomery Street, 10th Floor
Syracuse, New York 13202

4-26-99
Dated

ATTACHMENT A

Enforcement-Related Personnel and Their Duties

Commissioner: Responsible for the overall administration of the Pretreatment Program and policy determinations.

Operations Manager/Pretreatment Coordinator: Responsible for the day-to-day administration of the Pretreatment Program and is given broad responsibility. Authorized to respond to a majority of the violations anticipated. Supervises the engineering and field staff.

Engineers: Have limited decisional responsibilities. Schedule sampling events, review self-monitoring reports, compliance reports, industrial inspection reports, county laboratory results and note any violations. Calculate Significant Noncompliance (SNC) and maintain tracking procedures for permits, Self-Monitoring Reports (SMRs), and enforcement activities. Investigate noncompliance and offer recommendations for violation responses, working under the supervision of the Operations Manager/Pretreatment Coordinator.

Field Staff/Inspectors: Conduct random compliance monitoring and inspections to build the informational base for enforcement activities. Provide written reports of site inspections to the engineers. Maintain tracking of permits, SMRs, and enforcement activities.

Legal Counsel: Advises the Commissioner and Pretreatment Program personnel on their legal responsibilities and provides representation at all levels of enforcement proceedings as deemed necessary by the Commissioner. Is consulted on matters requiring the legal interpretation of the sewer use ordinance and enforcement response plan. Routinely reviews all Notice of Violations (NOVs) and Administrative Orders (AOs). Drafts Notices of Hearings and Consent Orders. Tracks legal actions through the use of a master calendar and regular enforcement action review meetings and the Pretreatment Program personnel.

ATTACHMENT B

SCOPE OF WORK FOR NONPOINT SOURCE SUPPLEMENTAL ENVIRONMENTAL PROJECT

The Defendant County shall implement a nonpoint source Supplemental Environmental Project ("SEP") designed to develop and implement a Best Management Practices ("BMP") Program to reduce phosphorous (P) and erosion from agricultural sources and discharge of these pollutants into the Onondaga Lake drainage area. The SEP shall implement Ag Environmental Management ("AEM") plans for five to ten farms in the Onondaga Lake drainage area.

The AEM plans are comprehensive plans aimed at helping farmers reduce phosphorous and control erosion while maintaining the viability of their farming operations. The AEM is a compilation of twenty (20) primary BMPs - on farm measures that prevent or reduce nonpoint sources of pollution and are specifically tailored to each farm. These BMPs include the following:

1. Access Road Improvement
2. Alternative Water Supply
3. Barnyard Water Management System
4. Constructed Wetlands
5. Contour Farming
6. Cover and Green Manure Crop
7. Critical Area Protection - Permanent Vegetative Cover
- Streambank and Shoreline Protection
8. Diversion
9. Fencing
10. Filter Strip
11. Milking Center Waste Water Treatment and Disposal
12. Nutrient Management
13. Nutrient/Sediment Control System
14. Pasture Management
15. Pathogen Management
16. Riparian Forest Buffer
17. Silage Leachate Control
18. Stripcropping Systems
19. Terrace
20. Waterway

The implementation of AEM is carried out in the context of the farm as a business enterprise. These BMPs are New York State Department of Environmental Conservation approved and United States Department of Agriculture - Natural Resources Conservation Service certified for technical accuracy.

Description:

The SEP shall be completed in two parts, utilizing the tiered approach to AEM planning and implementation as follows:

Part I

Tier I. A general survey instrument shall be administered to collect basic information about the farm and farming practices. These surveys shall be completed on twenty-five (25) farms in the Onondaga Lake drainage area.

Tier II. Fourteen detailed worksheets shall be completed by the farmer, working with the Defendant County, that assess the farm's impact and potential impact on phosphorous loading into nearby tributaries to the lake. Erosion from sheet, rill, ephemeral and classic gully erosion also shall be addressed. These worksheets shall be completed on twenty-five (25) farms in the Onondaga Lake drainage area.

Part II

Tier III. A basic plan to reduce phosphorous erosion shall be developed with the farmer, keeping the farmer's business objectives in mind. This basic plan shall outline general solutions to reducing phosphorous and erosion problems identified in Tier II. Upon the completion of the basic plan, a more detailed AEM shall be completed along with a planning agreement signed with the farmer. This shall be done on five to ten farms in the Onondaga Lake drainage area.

Tier IV. Once the detailed plan is completed, a cost estimate and funding agreement between the farmer and Onondaga County shall be signed which will implement the AEM. This shall be done on five to ten farms in the Onondaga Lake drainage area.

Tier V. Evaluation of the environmental outcome on a specific farm shall take place. A monitoring program shall be set up on a specific farm to evaluate the effectiveness of selected BMPs installed on the farm at reducing phosphorous and erosion.

Time Line:

First Year: Complete Part I and begin AEM implementation in Part II. Establish monitoring station.

Cost: \$250,000

Second Year: Continue AEM implementation on five to ten farms. Establish and implement BMP to be monitored for each farm.

Cost: \$250,000

Third Year: Complete implementation on five to ten farms, and complete the post BMP monitoring.

Cost: \$250,000

Total Cost: \$750,000

The SEP shall commence within three (3) months of entry of the Consent Decree.